

SENATE BILL 3633

By Harper

AN ACT to amend Tennessee Code Annotated, Title 4;
Title 8; Title 33; Title 34; Title 36; Title 37 and
Title 39, relative to juvenile justice.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 37, is amended by inserting
Sections 2 through 32 of this act as a new chapter thereto.

SECTION 2. There is created the department of juvenile justice.

SECTION 3. Through the department of juvenile justice, the state, in cooperation with
juvenile courts, will strive to provide timely, appropriate and cost-effective services for children
who are adjudicated to be delinquent or unruly in accordance with this title. The department
shall work to preserve community safety throughout the state through efforts to combat
delinquency and other social ills concerning young people. The department shall assume all
responsibilities for delinquent and unruly children previously assigned to the department of
children's services.

SECTION 4.

(a) The governor shall appoint a person qualified by training and experience in
the area of juvenile justice to perform the duties of the commissioner of juvenile justice.

(b) The commissioner shall hold office at the pleasure of the governor, and the
commissioner's compensation shall be fixed by the governor and paid from the
appropriation available to the department pursuant to § 8-23-101(c)(16).

(c) The commissioner shall have the necessary offices, equipment and supplies
to carry out the duties of the office.

SECTION 5. The commissioner has the following powers and duties in addition to such other powers and duties as may be specifically provided by law in this title or as otherwise provided by law:

(1) Select and recommend to the appropriate state officials the employment or transfer of all personnel required for the operation of the department; provided, however, the transfer of any employees pursuant to this chapter or the initial organization of the new department pursuant to this chapter shall not result in any impairment, interruption or diminution of employee rights, privileges, salary, benefits, leave accumulation or employment; and, provided further, such transfer of employees pursuant to this chapter or initial organization of the new department pursuant to this chapter shall not result in a contract employee supervising a career service employee or conducting a job performance evaluation for a career service employee;

(2) Recommend to the appropriate state officials the salaries and compensation of all officers and employees of the department;

(3) Make and adopt rules, regulations and policies for the government, management and supervision of state juvenile justice agencies or facilities; prescribe the powers and duties of the officers and employees thereof; and provide for the care of children served by the department; provided, however, such rules shall be consistent with and subject to licensing approval authority of any other state agency which has responsibility for licensing or approval of any portion of program services or facilities provided by the department;

(4) Publish, in accordance with the rules, regulations, policies and procedures of the state publication committee, an annual report on the operation of the department and the services and programs under its supervision by January 31 and furnish the report to the governor, members of the general assembly, including the children and family affairs

committee of the house of representatives, other persons and relevant entities that may request the report, such as the Tennessee council of juvenile and family court judges and the Tennessee commission on children and youth, and others as the governor may consider appropriate;

(5) Promulgate, in consultation with the Tennessee council of juvenile and family court judges, rules and regulations relative to commitment criteria for the incarceration of juvenile offenders in facilities operated or managed by the department. Such regulations will be promulgated and in effect by July 1, 2009;

(6) Assume general responsibility for the proper and efficient operation of the department, its services and programs. The commissioner may establish such divisions and units within the department as necessary for its efficient operation;

(7) Promulgate necessary rules and regulations to govern administrative searches and inspections of employees of the department, juveniles in the custody of the department and visitors to facilities of the department. Such rules shall provide guidelines and standards for the manner in which the searches authorized by this subdivision shall be conducted;

(8) Promulgate rules and regulations concerning drug testing which are not inconsistent with § 41-1-121;

(9)

(A) Conduct investigations as deemed necessary to the performance of the commissioner's duties, and to that end, the commissioner or the commissioner's designee shall have the same power as a judge of the court of general sessions to administer oaths and to enforce the attendance and testimony of witnesses and the production of books and papers;

(B) The commissioner shall keep a record of such investigations, stating the time, place, nature or subject, witnesses summoned and examined, and the commissioner's conclusions;

(C) In matters involving the conduct of an office, a stenographic report of the evidence may be taken and a copy thereof with all documents introduced kept on file at the office of the department;

(D) The fees of witnesses for attendance and travel shall be the same as in the circuit court, but no officer or employee of the institution under investigation shall be entitled thereto;

(E) Any judge of the circuit or chancery court, upon application of the commissioner, may compel the attendance of witnesses, the production of books or papers and the giving of testimony before the commissioner, by a judgment for contempt or otherwise, in the same manner as in the cases before a circuit or chancery court;

(10)

(A) Conduct or cause to be conducted any administrative hearings relating to any factual determinations which the department is authorized or required to make pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, or pursuant to any other hearing procedures required by law or which may be necessary to provide due process procedures for individuals affected by the programs administered by the department;

(B) The commissioner, or any officer or employee of the department upon written authorization from the commissioner, has the power to administer oath and affirmations, take depositions, issue subpoenas and require the

production of documents and any books and records that may be necessary in the conduct of such hearings;

(11) Perform all duties and exercise all authority set forth in title 37, chapter 5, part 3, regarding community services agencies; and

(12) Establish from time to time committees composed of representatives from the public or private sectors for such purposes and durations as may be deemed appropriate or required by the commissioner. Members of such committees shall be reimbursed for their actual expenses for attending meetings of their respective committees. All reimbursement for travel expenses shall be in accordance with the provisions of the comprehensive travel regulations as promulgated by the department of finance and administration and approved by the attorney general and reporter.

SECTION 6. The department has the following powers:

(1) Administer, develop and oversee all state programs relating to juvenile justice, including, but not limited to, probation services and other services as required by law or as otherwise reasonably necessary for unruly or delinquent children, and their respective families; provided, however, such administration shall be consistent with and subject to licensing or approval authority of any other state agency which has responsibility for licensing or approval of any portion of program services or facilities provided by the department;

(2) Provide services as required by law to children committed to its custody pursuant to title 37 or 39, or provide services to children who are in need of services as required or permitted by law the interstate compact on the placement of juveniles in §§ 37-4-101 - 37-4-106;

(3) License or approve and supervise any entity which provides services consistent with this chapter and the exceptions set forth therein;

(4) For the purposes of treatment, reunification and rehabilitation, allow delinquent children committed to the department's custody to make home visits to the natural parent(s), relatives or legal guardian. Such visits must be approved by the committing juvenile court, unless such court declines to exercise decision making in regard to home passes, in which case the commissioner has authority to grant passes without any further court approval or action;

(5) Receive and administer state funds appropriated for children being served by the department;

(6) Seek, apply for, receive and administer federal funds as well as any other grants or funds that can be used for children being served by the department;

(7) Administer the contractual obligations and functions or the funding arrangements for the department;

(8) Enter into contracts with the departments of human services, mental health and developmental disabilities, children's services, education and health, with agencies of such departments, or any other department or agency of state government, with private individuals and corporations, and with associations, organizations or any other entities, governmental or otherwise, for services which the department of juvenile justice may deem necessary to carry out the purposes of this title. Such services may include, but are not limited to, health, psychological, social, education, transportation, program evaluation, detention, prevention, assessment and case management;

(9) Develop and maintain a system for the purpose of handling, coordinating, processing and disseminating the information generated by the department's activities and services;

(10) Provide appropriate training, either through the department or by contract, to individuals within the department and may provide training to those entities delivering

services for the department. The attorney general and reporter shall, upon request, advise the department on matters of law;

(11) Acquire, hold or alienate property or leaseholds necessary or desirable for the performance of any of its functions which are vested in it by law; and

(12)

(A) Establish any programs for the use of volunteers who may be able to provide assistance to the department in any of the services which are vested in it by law or which it may provide as a necessary part of such services. To the extent funds are available, and if necessary and desirable, the department may reimburse such volunteers for actual travel or other reasonable expenses for their services. All reimbursement for travel expenses shall be in accordance with the comprehensive travel regulations as promulgated by the department of finance and administration and approved by the attorney general and reporter. Meals may be furnished without charge at department facilities if the scheduled volunteer assignment extends over an established meal period. The department may use any funds available including federal, state or local funds or private donations which it has for any expenses associated with these programs;

(B) Any volunteers who are registered by the department with the board of claims shall be accorded the same protections, legal representation authorization and immunities as state employees pursuant to title 8, chapter 42., and § 9-8-307 for civil or criminal actions brought against them within the scope and course of their activities in such volunteer programs; provided, however, they shall not be covered by workers' compensation pursuant to § 9-8-307; and

(C) Volunteers may use state vehicles when their assignments so require, subject to the approval of the department and in compliance with any policies or rules or regulations which may be promulgated by the department.

SECTION 7.

(a) All applications, certificates, records, reports, and all legal documents, petitions and records made or information received pursuant to this title and directly or indirectly identifying a child or family receiving services from the department shall be kept confidential and shall not be disclosed except as allowed by existing statutes, rules or policies, or statutes as they may be amended. The department may utilize any information it has or may acquire to provide services to the child. The department may release records to a person or entity who may be providing system or program evaluation. The department shall release records to any person or entity who provides system or program evaluation at the request of the department. Additionally, the department shall release to the Tennessee commission on children and youth any and all records requested by the commission which the commission believes necessary to perform its duties and responsibilities. Any person or entity, including the commission, who is provided access to records under this subsection (a) shall be required to maintain such records in accordance with state and federal laws and regulations regarding confidentiality.

(b) Upon placement of a child in the custody of the department, all state, county and local agencies shall, notwithstanding any state laws or regulations to the contrary, grant access to any and all records in their possession which relate to the child for use by the department to determine a child's condition, needs, treatment or any other area of management; provided, however, release of health care information must be consistent with the laws and policies of the departments of health and mental health and

developmental disabilities. The department shall comply with federal statutes and regulations concerning confidentiality of records. Any records which are confidential by law upon the enactment of this legislation shall be maintained as confidential by the department.

(c) Except as otherwise provided pursuant to 20 U.S.C. § 1232g(b)(1), prior to the release of student records, the local education agency must give written notice to the student and parent as required by 20 U.S.C. § 1232g(b)(1), and must provide the parent with a copy of all records released.

(d) Release of drug and alcohol records must comply with federal and state laws and regulations regarding the release of these records.

SECTION 8. The department has the power and authority to establish by policy, rule or regulation provisions for prohibition of any conflict of interest that may occur within the department that may affect the constitutional rights of a child being served by the department. The department shall exercise this power and authority consistent with the provisions regarding conflicts of interest under title 12, chapter 4, part 1.

SECTION 9.

(a) Contracts or leases entered into prior to July 1, 2008, with respect to any program or function transferred to the department with any entity, corporation, agency, enterprise or person, shall continue in full force and effect as to all essential provisions in accordance with the terms and conditions of the contracts in existence on July 1, 2008, to the same extent as if such contracts had originally been entered into by and between such entity, corporation, agency, enterprise or person and the department, unless and until such contracts or leases are amended or modified by the parties thereto or until the expiration of such contract.

(b) This chapter shall not be implemented in any manner which violates the prohibition against impairment of contract obligations as contained in article I, § 20 of the Constitution of Tennessee.

SECTION 10. After July 1, 2008, the department, through its commissioner, shall have the authority to receive, administer, allocate, disburse and supervise any grants and funds from whatever sources, including, but not limited to, the federal, state, county and municipal governments on a state, regional, county or any other basis, with respect to any programs or responsibilities outlined in this chapter or assigned to the department by law, regulation or order. Exercise of this authority shall not be inconsistent with laws or regulations governing the appropriation and disbursement of funds as administered by the department of finance and administration.

SECTION 11. All current rules, regulations, orders, decisions and policies heretofore issued or promulgated by any departments of state government whose functions have been transferred under this chapter shall remain in full force and effect and shall hereafter be administered and enforced by the department. To this end, the department, through its commissioner, shall have the authority, consistent with the statutes and regulations pertaining to the programs and functions transferred herein, to modify or rescind orders, rules and regulations, decisions or policies heretofore issued and to adopt, issue or promulgate new orders, rules and regulations, decisions or policies as may be necessary for the administration of the programs or functions herein transferred.

SECTION 12. The department shall have its youth development centers accredited by a regionally or nationally recognized accreditation body such as the American Correctional Association, the Council on Accreditation or other accreditation agency.

SECTION 13.

(a) Any program relating to children who have been adjudicated as delinquent or unruly which was administered by the department of children's services prior to July 1, 2008, shall be transferred to, and administered by, the department of juvenile justice on and after July 1, 2008.

(b) All staff, staff positions, offices, equipment, supplies, property, funds and other resources of any juvenile justice program under the department of children's services shall be transferred to the department of juvenile justice.

(c)

(1) References to the department of children's services relative to juvenile justice programs appearing elsewhere in this code shall be deemed to be references to the department of juvenile justice.

(2)

(A) The code commission is directed to change references to the existing titles of officials, offices, agencies and entities, whenever they appear in this code, to conform to the titles of officials, offices, agencies and entities created by the provisions of this chapter.

(B) The code commission is authorized to make grammatical changes in this code to effectuate such changes.

(d)

(1) All contracts and leases entered into by the department of children's services relative to programs for children adjudicated to be delinquent or unruly shall continue in full force and effect as to all provisions in accordance with the terms and conditions of such contracts or leases in existence on July 1, 2008, unless and until such contracts or leases expire or are duly amended or modified by the parties thereto.

(2) All rules, policies, orders and decisions related to services for children adjudicated delinquent or unruly promulgated or issued by the department of children's services prior to, and in effect on July 1, 2008, shall remain in force and effect and shall be administered and enforced by the department of juvenile justice until duly amended, repealed, expired, modified or superseded.

SECTION 14. The department shall be reviewed pursuant to the requirements set out in the Tennessee Governmental Entity Review Law, compiled in title 4, chapter 29. Further, the department shall respond to requests for information from any other legislative committees including, but not limited to, the joint fiscal review committee, the general welfare, health and human resources committee of the senate, the health and human resources committee of the house of representatives, and the government operations committees of the senate and house of representatives, to ensure that thorough review and oversight of the department is accomplished.

SECTION 15. No person shall, on the grounds of race, color, national origin, sex, age or ability to pay, be excluded from participation, be denied the benefits of or be otherwise subjected to discrimination under any program or activity operated by the department of juvenile justice. This shall include, but not be limited to, contracts for services, employment or services to consumers.

SECTION 16. After July 1, 2008, any person employed as a youth service officer by the department of juvenile justice shall:

- (1) Be at least eighteen (18) years of age;
- (2) Be a citizen of the United States;
- (3) Have such person's fingerprints on file with the Tennessee bureau of investigation for criminal identification;
- (4) Have passed a physical examination by a licensed physician;

(5) Have a good moral character as determined by investigation; and

(6) Be free from all apparent mental disorders. Applicants must be certified as meeting this criterion by a qualified professional in the psychiatric or psychological fields.

SECTION 17.

(a) All persons employed to control and manage juvenile justice programs for the state shall, before entering upon the discharge of their duties, take and subscribe the following oath: "I do solemnly swear (or affirm) that I will fully, faithfully, impartially, and diligently perform all the duties required of me as in the department of juvenile justice, that I will execute the laws and regulations prescribed for the government of the department, so far as concerns my office; that I will accept no bribe, or other compensation during my continuance in office, other than such compensation as is allowed by law; and that I will, on no occasion, ill treat or abuse any juvenile in the care of the department."

(b) This oath shall be filed in the office of the secretary of state, and its violation by any of such officers or employees shall be perjury, punishable as in other cases of perjury.

SECTION 18.

(a) The youth development centers and any other facilities deemed appropriate by the commissioner shall be a special school district which shall be given the same funding consideration for federal funds that school districts within the state are given.

(b) The schools within such youth development centers and any other facilities deemed appropriate by the commissioner shall be under the control of the commissioner who shall serve as the board of education and superintendent of schools for such district.

(c)

(1) The schools shall meet the requirements of the law for public schools and rules and regulations of the state board of education.

(2) The commissioner of education may grant waivers for such provisions of the laws and regulations with which the schools cannot comply because of the function of the youth development centers and any other facilities deemed appropriate by the commissioner on an annual basis and in response to the commissioner of children's services or the commissioner's designee's written request and justification. Such exceptions shall be in writing.

(d)

(1) Each teacher in the special school district shall receive annual compensation at a rate of one tenth (1/10) times twelve (12) of the annual compensation in effect in the county in which the respective youth development center and any other facilities deemed appropriate by the commissioner is located or one tenth (1/10) times twelve (12) of the average of the annual compensation of all the counties which are contiguous with the county in which the respective youth development centers and any other facilities deemed appropriate by the commissioner is located, whichever is greater, solely out of the state appropriations made to the respective youth development centers and any other facilities deemed appropriate by the commissioner.

(2) This subsection (d) shall not act to reduce the compensation currently paid any teacher in the special school district.

(3) To the extent such resources are available, federal funding resources shall be utilized to meet increased costs resulting from implementation of this subsection.

(4) Longevity shall not be paid to teachers in the special school district under both §§ 8-23-206 and 49-5-402.

(e) The commissioner shall develop and implement a plan whereby there shall be sufficient substitute teachers available for temporary service as needed for each school composing the special school district.

(f)

(1) Nothing in this section shall be construed as prohibiting any local school district from issuing a diploma to a resident of a youth development center and any other facilities deemed appropriate by the commissioner, upon certification of the principal of a youth center school.

(2) School records of any juvenile in the correctional programs who is issued a diploma by a local school district shall be maintained by such local school district; provided that all references to the juvenile's commitment to and treatment by the department of juvenile justice are expunged.

(g) The special school district of youth development centers and any other facilities deemed appropriate by the commissioner under the department shall have the powers, privileges and authority exercised or capable of exercise by any other school district.

(h) The effect of this section shall not be to provide state funds to the special school district of youth development centers and any other facilities deemed appropriate by the commissioner under the department of juvenile justice through the minimum foundation program.

SECTION 19. There is created a library region to be composed of the youth centers under the control of the department.

SECTION 20.

(a) The commissioner is authorized to promulgate rules and regulations establishing procedures, fees and charges for any service rendered relative to post-adoption search services and records handling services which are at any time required or permitted by law to be provided by the department.

(b) The commissioner is empowered to promulgate rules and regulations to reduce or eliminate fees or charges for services, identified under this section, based upon recipients' condition or ability to pay. The amount of any fee or charge established by the commissioner under the provisions of this section shall not exceed the cost of providing the service.

(c) Any fees or charges received by the department under this section shall be deposited with the state treasurer in accordance with the provisions set forth in § 9-4-301.

SECTION 21.

(a) For the detention, treatment, rehabilitation and education of children found to be delinquent, there shall be youth development centers. Such centers shall be under the supervision and control of the department of juvenile justice.

(b) Nothing in this chapter shall be construed so as to restrict or prohibit coeducational programs in any youth center for delinquent children.

SECTION 22. There shall be a superintendent of each youth center to be appointed by the commissioner of juvenile justice or the commissioner's designee.

SECTION 23.

(a) The superintendent has charge, control and supervision of the youth center, its employees and students.

(b) Such superintendent has authority to make recommendations to the commissioner of children's services for the release of children placed in the center.

SECTION 24.

(a) The superintendents of such centers shall have the authority, subject to the approval of the commissioner of juvenile justice, to introduce any branch of educational pursuit which they may deem to be in the best interest of the children, and they shall use their utmost efforts for the moral, physical and mental development of the children, so that they may be molded into good men and women and useful citizens.

(b) Any superintendent may, subject to the approval of the commissioner, establish a work opportunity program for children sixteen (16) years of age or older.

(c) The superintendent shall, before any child is permitted to take employment, ensure that the prospective employment meets all requirements of the department of labor and workforce development pertaining to the employment of children.

(d) The superintendent will ascertain the availability of transportation to and from the place of work and the cooperation of the employer and supervisors with supervision requirements. Hours of release for involvement of the work opportunity program will be the responsibility of the superintendent in keeping with departmental consideration for the good of the child and the welfare of the department.

(e) All moneys earned by the child in the work opportunity program shall be posted to the child's trust fund account. Expenditures under this program from the child's earnings should be limited to transportation, special clothing, tools and/or lunch and other casual expenses with the approval of the superintendent.

SECTION 25.

(a) Fees that are allowed by law for carrying prisoners to the penitentiary shall be allowed to the sheriffs for taking children found to have committed offenses punishable in the penitentiary to such youth centers.

(b) The state shall only be responsible for the transfer of such children as have been found to have committed offenses punishable by imprisonment in the penitentiary. The expense of transporting delinquent children not found to have committed offenses punishable in the penitentiary shall be paid by the counties from which committed.

(c) When any female child is to be transported to such youth centers, the sheriff shall deputize a suitable woman of good moral character to convey such child. In the event the sheriff shall not find such a woman in the county, the department shall provide a proper and suitable escort for the child, and this escort shall be paid from the allowance provided for the sheriff. The expense of the woman so deputized shall be paid from the allowance for the sheriff.

SECTION 26.

(a) Any child committed to the department for an offense punishable by confinement in the penitentiary may be retained in a youth center until such child's nineteenth birthday, or at any time after the child's eighteenth birthday, when found to be incorrigible by the superintendent, subject to agreement between the commissioner of correction and the commissioner of juvenile justice, may be transferred to the penitentiary. The authority for transferring such children who are eighteen (18) years of age or older shall be upon warrant issued by the commissioner. The warrant must contain the name of the child, age at conviction and at the transfer, and the offense for which committed. The superintendent shall furnish to the warden of the penitentiary the original commitment papers in the case.

(b) Any child or inmate sixteen (16) years of age or over, confined in a youth center and who escapes therefrom commits a Class A misdemeanor. The superintendent of the youth center, with the approval of the commissioner, may certify to the district attorney general in the district in which the escape was effected, that such

escape has occurred and the facts relating thereto. The child or inmate thus certified as having escaped may be prosecuted as an adult in the court having jurisdiction of the offense, as if the child or inmate were an adult.

SECTION 27. Authority is given for the commitment to the department of children who may be convicted of any offense against the United States in any district court of the United States within the state and sentenced by such court to the department, and to that end, the commissioner may enter into a contract with the attorney general of the United States for their detention, subsistence and proper employment of such juvenile offenders and the rate of compensation to be paid for the use of the institution by the United States.

SECTION 28.

(a) A judge committing a child under the age of eighteen (18) to the department shall make out and sign a commitment on a form provided by the department and certified to by the clerk under the seal of the court.

(b) Such commitment form, together with information of a social nature, shall be forwarded with the child.

SECTION 29.

(a) The superintendents shall:

(1) Keep complete records of all children, their conduct, character and aptitudes;

(2) Keep a set of account books in which all expenses of the youth center shall be entered, and shall sign all vouchers;

(3) Keep a record of all products made or raised on the grounds of the youth center; and

(4) Sell such products as are not used or needed by the youth center, and make reports of such sales to the commissioner of children's services.

(b) Their books and accounts shall at all times be open to the inspection of any state auditor.

(c) They shall give bond payable to the state, for the safekeeping of all money or property belonging to the state coming into their possession.

(d) They shall make quarterly reports to the commissioner of the income and expenditures of their youth centers, the number of children, their terms, names, ages and conduct.

SECTION 30. The commissioner shall be authorized, subject to the approval of the governor, to erect all buildings necessary for the proper maintenance of the children committed to the department of youth development, and to purchase all things for the proper equipment of the youth centers, under appropriations made from time to time.

SECTION 31.

(a) The commissioner shall keep an account of all products of the youth centers, and shall include a report of same in the commissioner's biennial report.

(b) All money received from the operation of the youth centers shall be expended for the proper maintenance of the youth centers.

SECTION 32. Tennessee Code Annotated, Section 8-23-101(c), is amended by inserting the following as a new, appropriately designated subdivision thereto:

(16) Commissioner of juvenile justice.

SECTION 33. Tennessee Code Annotated, Title 37, Chapter 5, Part 2, is deleted in its entirety.

SECTION 34. Tennessee Code Annotated, Section 37-5-101, is amended by deleting subsection (b) in its entirety.

SECTION 35. The department shall promulgate rules in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in Tennessee Code Annotated, Title 4, Chapter 5, to implement the provisions of this act.

SECTION 36. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 37. This act shall take effect July 1, 2008, the public welfare requiring it.